

Introduced by Councilmember Hampton

**ORDINANCE NO. 7381**

**AN ORDINANCE OF THE CITY OF PASADENA, CALIFORNIA AMENDING THE TOBACCO RETAILER LICENSE ORDINANCE, TITLE 5, CHAPTER 5.74 OF THE PASADENA MUNICIPAL CODE; AND THE TOBACCO USE PREVENTION ORDINANCE, TITLE 8, CHAPTER 8.78 OF THE PASADENA MUNICIPAL CODE**

The People of the City of Pasadena ordain as follows:

**SECTION 1.** This ordinance, due to its length and the corresponding costs of publication, will be published by title and summary as permitted by Section 508 of the Charter. The approved summary of this ordinance reads as follows:

**“SUMMARY**

The purpose of Ordinance No. 7381 is to amend the Pasadena Municipal Code to update local smoking regulations and prohibit the sale and distribution within the city of mentholated cigarettes and other flavored tobacco products, including flavored products for electronic smoking devices, including electronic smoking device liquids, flavored little cigars, flavored hookah, and tobacco look-alike products.

This ordinance shall take effect upon the expiration of 30 days from publication by title and summary.”

**SECTION 2.** Title 5, Chapter 5.74, Section 5.74.030, Subsection B of the Pasadena Municipal Code is hereby amended to read as follows:

B. "Tobacco product" means the same as set forth in Section 8.78.040 (L).

**SECTION 3.** Title 5, Chapter 5.74, Section 5.74.030 of the Pasadena Municipal Code is hereby amended to add new Subsections E, F, G, H, and I to read as follows:

E. “Flavored Tobacco Product” means any tobacco product, as defined in this chapter, which imparts a characterizing flavor. This means a taste or aroma, other

than the taste or aroma of tobacco, imparted either prior to or during consumption of a tobacco product or any byproduct produced by the tobacco product, including, but not limited to, any taste or smell relating to fruit, menthol, mint, wintergreen, chocolate, cocoa, vanilla, honey, or any candy, dessert, alcoholic beverage, herb or spice.

- F. “Electronic Smoking Device” means any device that may be used to deliver any aerosolized or vaporized substance to the person inhaling from the device, including, but not limited to, an e-cigarette, e-cigar, e-pipe, vape pen or e-hookah. Electronic Smoking Device includes any component, part or accessory of the device, and also includes any substance that may be aerosolized or vaporized by such device, whether or not the substance contains nicotine. Electronic Smoking Device does not include drugs, device or combination products authorized for sale by the U.S. Food and Drug Administration, as those terms are defined in the Federal Food, Drug and Cosmetic Act.
- G. “Sale” or “Sell” means any transfer, exchange, barter, gift, offer for sale, or distribution for a commercial purpose, in any manner or by any means whatsoever.
- H. “Tobacco Retailing” means engaging in the activities of a tobacco retailer.
- I. “Smoking” means inhaling, exhaling, burning or carrying any lighted or heated cigar, cigarette or pipe or any other lighted or heated tobacco or plant product intended for inhalation, whether natural or synthetic, in any manner or in any form. “Smoking” includes the use of an electronic smoking device that creates an aerosol or vapor, in any manner or in any form, or the use of any oral smoking device for the purpose of circumventing the prohibition of smoking.

**SECTION 4.** Title 5, Chapter 5.74, Section 5.74.050 C of the Pasadena Municipal Code is hereby amended to add new Subsections 5, 6 and 7 to read as follows:

- 5. The applicant’s tobacco license number issued by the California Department of Tax and Fee Administration.
- 6. Such other information as the city deems necessary for the administration or enforcement of this chapter.
- 7. Whether any applicant has violated any local, state or federal tobacco control law within the preceding five years.

**SECTION 5.** Title 5, Chapter 5.74, Section 5.74.060, Subsections A.4 and B of the Pasadena Municipal Code are hereby amended to read as follows:

4. The city has information that the proprietor or his or her agent or employee has violated any local, state or federal tobacco control law within the preceding one hundred twenty (120) day period.
- B. A license shall be valid for one year and must be renewed prior to the expiration of the payment term.

**SECTION 6.** Title 5, Chapter 5.74, Section 5.74.110, Subsections A, B and C of the Pasadena Municipal Code are hereby amended, and a new Subsection D is added to read as follows:

**5.74.110 - Enforcement.**

- A. The provisions of this chapter shall be enforced by the city health officer or an authorized designee in the environmental health division or by the City Prosecutor.
- B. Violations of this chapter may be charged as a misdemeanor or an infraction in the discretion of the City Prosecutor.
- C. In addition to the above remedy, a violation of this chapter may be remedied by civil action initiated by the City Attorney.
- D. Any violation of this chapter is hereby declared to be a public nuisance.

**SECTION 7.** Title 5, Chapter 5.74, Section 5.74.120 of the Pasadena Municipal Code is hereby deleted in its entirety.

**SECTION 8.** Title 8, Chapter 8.78, Section 8.78.020 of the Pasadena Municipal Code is hereby amended to read as follows:

**8.78.020 - Findings and purpose.**

The city council finds that the smoking of tobacco, or any other weed or plant, is a positive danger to health and a material annoyance, inconvenience, discomfort and a health hazard to those who are present in confined spaces, and that smoking rates are on the increase among the youth population of Los Angeles County. In addition, the U.S. Surgeon General and the U.S. Environmental Protection Agency have concluded that secondhand smoke causes lung cancer and heart disease in healthy nonsmokers. In order to promote public health, safety and welfare, the declared purposes of this chapter are to prohibit the smoking of tobacco, or any weed or plant, in public places, multi-unit housing properties, and places of employment, to protect the public health by restricting public exposure to secondhand smoke, and to restrict youth access to tobacco products, as stated and required in this chapter.

**SECTION 9.** Title 8, Chapter 8.78, Section 8.78.030 of the Pasadena Municipal Code is hereby amended to read as follows:

#### **8.78.030 - Authority.**

This chapter is enacted pursuant to the provisions of Section 118910 of the California Health and Safety Code for the purpose of prohibiting smoking in public places, multi-unit housing properties, and in places of work in order to eliminate the hazards and nuisance which smoking causes to those who are involuntarily exposed.

**SECTION 10.** Title 8, Chapter 8.78, Section 8.78.040 of the Pasadena Municipal Code is hereby amended to read as follows:

#### **8.78.040 - Definitions.**

The following words and phrases, whenever used in this chapter, shall be construed as defined in this section:

- A. "Bar" means an area which is devoted to serving of alcoholic beverages and in which the service of food is only incidental to the consumption of such beverages.
- B. "Employer" means any person who employs the services of an individual person.
- C. "Employee" means any person who is employed by any employer for direct or indirect monetary wages or profit.
- D. "Enclosed" means closed in by a roof and four walls with appropriate openings for ingress and egress.
- E. A "Self-service display" means the open display of tobacco products or tobacco paraphernalia in a manner that is accessible to the general public without the assistance of the retailer or employee of the retailer.
- F. "Entertainment facilities" means poolhalls, bingo parlors, bowling alleys and similar establishments.
- G. "Motion picture theater" means any theater engaged in the business of exhibiting motion pictures.
- H. "Restaurant" means any coffee shop, cafeteria, luncheonette, soda fountain, fast food service, or other establishment where cooked or otherwise prepared food is sold or given away to the public. The definition for restaurant shall include all enclosed areas of the facility including the dining area, and all outdoor areas designated for dining.
- I. "Smoking" means inhaling, exhaling, burning, or carrying any lighted or heated cigar, cigarette or pipe, or any other lighted or heated tobacco or plant product, including cannabis, intended for inhalation, whether natural or synthetic, in any manner or in any form. "Smoking" includes the use of an electronic smoking

device that creates an aerosol or vapor, in any manner or in any form, or the use of any oral smoking device for the purpose of circumventing the prohibition of smoking.

- J. "Workplace" means any enclosed area which is occupied by two or more employees of a commercial enterprise, nonprofit entity, or the city of Pasadena; or any office that shares an HVAC system with another office.
- K. "Vendor-assisted sale" means a purchase requiring a direct, face-to-face exchange between the retailer and the customer, in which the vendor has access to the tobacco product, and assists the customer by supplying the product. The customer does not take possession of the product until it is purchased.
- L. "Tobacco product" means any of the following:
  - 1.
    - a. A product containing, made or derived from tobacco or nicotine that is intended for human consumption, whether smoked, heated, chewed, absorbed, dissolved, inhaled, snorted, sniffed, or ingested by any other means, including, but not limited to cigarettes, cigars, little cigars, chewing tobacco, pipe tobacco, smokeless tobacco or snuff.
    - b. An electronic device that delivers nicotine or other vaporized liquids to the person inhaling from the device, including, but not limited to an electronic cigarette, cigar, pipe, or hookah.
    - c. Any component, part, or accessory of a tobacco product, whether or not sold separately.
  - 2. Tobacco product does not include a nicotine replacement product approved by the United States Food and Drug Administration.
- M. "Private smoker's lounge" means an enclosed area in or attached to a retail or wholesale tobacco store that is dedicated to the use of tobacco products, including, but not limited to, cigars and pipes.
- N. "Tobacco store" means a retail business that meets all of the following requirements:
  - 1. Primarily sells tobacco products.
  - 2. Generates more than 60 percent of its gross revenues annually from the sale of tobacco products and tobacco paraphernalia.
  - 3. Does not permit any person under 18 years of age to be present or enter the premises at any time, unless accompanied by the person's parent or legal guardian.

4. Does not sell alcoholic beverages or food for consumption on the premises.
- O. "Service waiting line" means a place, public or private, where people use or wait for services, enter a public place, or make a transaction, whether or not such service or transaction includes the exchange of money, including, but not limited to, bus stops, ATMs, bank teller windows, telephones, ticket lines, cab stands, information kiosks, and theater lines.
- P. "Shopping mall" means any parcel of land zoned and used for retail sales by more than one retailer that is jointly operated or which includes shared parking facilities.
- Q. "Reasonable distance" means a distance of at least 20 feet in any direction from an area in which smoking is prohibited.
- R. "Cannabis" or "marijuana" means all parts of the plant *Cannabis sativa* Linnaeus, *Cannabis indica*, or *Cannabis ruderalis*, whether growing or not; the seeds thereof; the resin, whether crude or purified, extracted from any part of the plant; and every compound, manufacture, salt, derivative, mixture, or preparation of the plant, its seeds, or resin. "Cannabis" also means the separated resin, whether crude or purified, obtained from cannabis. "Cannabis" also means marijuana as defined by Section 11018 of the Health and Safety Code. "Cannabis" does not include the mature stalks of the plant, fiber produced from the stalks, oil or cake made from the seeds of the plant, any other compound, manufacture, salt, derivative, mixture, or preparation of the mature stalks (except the resin extracted therefrom), fiber, oil, or cake, or the sterilized seed of the plant which is incapable of germination. "Cannabis" does not mean "industrial hemp" as defined by Section 81000 of the Food and Agricultural Code or Section 11018.5 of the Health and Safety Code.

**SECTION 11.** Title 8, Chapter 8.78, Section 8.78.051, Subsection A of the Pasadena Municipal Code is hereby amended to read as follows:

- A. It is unlawful for any person to possess a burning tobacco or tobacco-related product, including, but not limited to, cigars and cigarettes; to possess a burning marijuana cigarette, or other smoking implement containing marijuana; to chew tobacco or tobacco-related products; to dispose of lighted or unlighted cigars, cigarettes, cigarette butts or marijuana butts, or any other tobacco-related waste, in or upon any dedicated city-operated park, playground, community center, or recreation center.

**SECTION 12.** Title 8, Chapter 8.78, Section 8.78.060 of the Pasadena Municipal Code is hereby amended to read as follows:

**8.78.060 - Prohibition of smoking in public places.**

Except as otherwise provided in this chapter, it is unlawful to smoke or to allow smoking in all enclosed public places within the city, including, but not limited to, the following places:

- A. Elevators in buildings generally used by and open to the public, including elevators in offices, hotels, and multifamily buildings;
- B. In all areas of both publicly and privately owned hospitals, assisted living facilities, and long-term health care facilities;
- C. Indoor service waiting lines;
- D. Public meeting rooms, including hearing rooms, conference rooms, chambers, and places of public assembly;
- E. Public restrooms;
- F. Theaters, stadiums and auditoriums, including every publicly or privately owned theater, auditorium, or other enclosed facility which is open to the public for the primary purpose of exhibiting any motion picture, stage drama, musical recital, athletic event, or any other performance or event. Every owner and/or manager of such facility used for the purposes stated herein, shall post signs conspicuously in the lobby stating that smoking is prohibited and in the case of motion picture theaters, such information shall be shown upon the screen for at least five seconds before each showing. This section shall not be construed to prevent smoking by performers in connection with a stage production or by persons making a presentation concerning addiction to tobacco or other drugs;
- G. Restaurants, hotel lobbies, and common areas within hotels and motels, excluding guest rooms.

**SECTION 13.** Title 8, Chapter 8.78, Section 8.78.061 of the Pasadena Municipal Code is hereby amended to read as follows:

**8.78.061 - Requirement of vendor-assisted sales.**

It is unlawful for any person, business, or tobacco retailer to sell, permit to be sold, or offer for sale any tobacco product by means of a self-service display, cigarette vending machine, or by any means other than vendor-assisted sales. This prohibition shall not apply to tobacco stores and private smoker's lounges.

**SECTION 14.** Title 8, Chapter 8.78, Section 8.78.062 of the Pasadena Municipal Code is hereby amended to read as follows:

**8.78.062 - Purchaser identification.**



- A. The seller of any tobacco products shall require photographic identification if a purchaser reasonably appears to be under 30 years of age. In compliance with federal and state law, tobacco products shall not be sold to anyone under 21 years of age.
- B. The minimum legal age of sale for active duty military personnel in the United States Armed Forces is 18 years of age upon presentation of a valid identification card issued by the United States Armed Forces.

**SECTION 15.** Title 8, Chapter 8.78 of the Pasadena Municipal Code is hereby amended to add a new Section 8.78.063 to read as follows:

**8.78.063 – Tobacco products prohibited**

It shall be a violation of this Chapter for a tobacco retailer or its agent(s) or employee(s) to sell or offer for sale, to display or advertise, or to possess with intent to sell or offer for sale, any flavored tobacco product, including menthol, or any component, part, or accessory intended to impart a characterizing flavor in any form, to any tobacco product or nicotine delivery device, including electronic smoking devices, flavored little cigars, flavored hookah, and tobacco look-alike products. It shall also be a violation of this Chapter for a tobacco retailer or manufacturer, or any employee or agent of a tobacco retailer or manufacturer, to make a public statement or claim that the tobacco product has or produces a taste or smell other than tobacco; uses a text or other image on the tobacco product's labeling or packaging that explicitly or implicitly indicates that the tobacco product has or produces a taste or smell other than tobacco; or takes any action directed to consumers that would reasonably be expected to cause consumers to believe that the tobacco product has or produces a taste or smell other than tobacco.

**SECTION 16.** Title 8, Chapter 8.78, Section 8.78.070, Subsections A and D of the Pasadena Municipal Code are hereby amended to read as follows:

- A. Except as allowed in California Labor Code section 6404.5 when not in conflict with this chapter, it is unlawful to smoke or to allow smoking in all enclosed workplaces of commercial enterprises, nonprofit entities and all city-owned and managed buildings and vehicles, including, but not limited to, open office areas, shared offices, private offices, hallways, restrooms, escalators, elevators, stairways, lobbies, reception areas, waiting rooms, classrooms, meeting or conference rooms, and auditoriums.
- D. Notwithstanding this section, a private residence including either an attached or detached garage shall not constitute a workplace, except when the residence serves as a licensed child day care facility.

**SECTION 17.** Title 8, Chapter 8.78, Section 8.78.071 of the Pasadena Municipal Code is hereby amended to read as follows:



**8.78.071 - Prohibition of smoking in certain outdoor public places.**

- A. It shall be unlawful to smoke or to allow smoking in the following outdoor public places:
1. Outdoor areas of shopping malls;
  2. Unenclosed areas of bars and restaurants;
  3. Service waiting lines or within 20 feet of such lines;
  4. Outdoor public gathering events/special events/parades/fairs.
  5. Upon the grounds of any Pasadena Public Library. For the purposes of this paragraph: "grounds" shall include, without limitation, landscaped areas, patios, stairways, walls, parking lots and walkways on publicly owned property, adjacent to any Pasadena Public Library; "Pasadena Public Library" shall include the Pasadena Central Library, Allendale Branch Library, Hastings Branch Library, Hill Avenue Branch Library, La Pintoresca Branch Library, Lamanda Park Branch Library, Linda Vista Branch Library, San Rafael Branch Library, Santa Catalina Branch Library and Villa Parke Branch Library.
- B. Notwithstanding exemptions enumerated under California Labor Code Section 6404.5, the prohibitions in Section A above shall apply to the outdoor areas of a "private smokers' lounge" and "retail or wholesale tobacco stores" as defined under state law, and to "significant tobacco retailers" as defined under the city's zoning code.

**SECTION 18.** Title 8, Chapter 8.78, Section 8.78.072 of the Pasadena Municipal Code is hereby amended to read as follows:

**8.78.072 - Reasonable smoking distance required — 20 feet.**

- A. Smoking in unenclosed areas shall be prohibited within a reasonable distance (20 feet) from any doorway, window, opening, or vent into an enclosed area in which smoking is prohibited, except while actively passing on the way to another destination.
- B. Tobacco stores and private smoker's lounges shall maintain doors and windows closed at all times smoke is present when the doors and windows are located less than 20 feet from a doorway, window, opening, or vent into an enclosed area in which smoking is prohibited.

**SECTION 19.** Title 8, Chapter 8.78, Section 8.78.080 of the Pasadena Municipal Code is hereby amended to read as follows:

**8.78.080 - Posting of signs.**

- A. Every owner, operator, manager, or other persons having control of a structure, or the outdoor portion of a park facility, community center, recreational center, or library where smoking is prohibited shall conspicuously post in such buildings "No Smoking" signs.
  - 1. "No Smoking" signage shall include the words "NO SMOKING" in capital letters not less than one-inch in height on a contrasting background.
  - 2. The international "No Smoking" symbol (consisting of a pictorial representation of a burning cigarette enclosed in a red circle with a red bar across it) may be used in lieu of the written "No Smoking" sign. Alternative signage may be approved for use by the City's health officer.
- B. In structures where smoking is prohibited the "No Smoking" signs may be limited to first floor entrances and exits, lobbies, restrooms, and elevators.

**SECTION 20.** Title 8, Chapter 8.78, Section 8.78.085, Subsections A.3 through D.3 of the Pasadena Municipal Code are hereby amended to read as follows:

- 3. "Nonsmoking area" means any unit or common area of multi-unit housing in which smoking is prohibited by this section.
- 4. "Unit" means a personal dwelling space, even where lacking cooking facilities or private plumbing facilities, and includes any associated exclusive-use enclosed area or unenclosed area, such as, without limitation, a private balcony, porch, deck or patio. "Unit" includes without limitation: an apartment; a condominium; a townhouse; a room in a long-term health care facility, assisted living facility, or hospital; a room in a single room occupancy facility; and a room in a homeless shelter.
- B. Nonsmoking areas in multi-unit housing.
  - 1. It is unlawful to smoke in all common areas of multi-unit housing.
  - 2. It is unlawful to smoke in all new units of multi-unit housing.
- C. Disclosure of the Requirements of this Section.
  - 1. At the time of the execution of a lease or other rental agreement for the occupancy of a multi-unit housing unit, or thereafter if not originally provided, the property manager or owner shall provide the lessee(s) a written disclosure regarding the prohibition of smoking on multi-unit housing property which includes a copy or summary of this section, and shall obtain a signed acknowledgement from the lessee(s).
    - a. The owner or property manager shall maintain a copy of all signed acknowledgements for current tenants.

- b. The owner or property manager shall provide the documents to the enforcement officer upon request.
- 2. Advertisements for a short-term rental of a multi-unit housing unit, shall include a disclosure regarding the prohibition of smoking on multi-unit housing property and a reference to this section. Additionally, a written disclosure shall be provided at the property and shall include a copy or summary of this section.
- 3. Homeowners associations shall provide the homeowners association members a written disclosure regarding the prohibition of smoking on multi-unit housing property which includes a copy or summary of this section, and shall obtain a signed acknowledgement from the member.
  - a. The homeowners association shall maintain a copy of all signed acknowledgements for current members.
  - b. The homeowners association shall provide the documents to the enforcement officer upon request.

**SECTION 21.** Title 8, Chapter 8.78, Section 8.78.090 of the Pasadena Municipal Code is hereby deleted in its entirety as follows:

**SECTION 22.** Title 8, Chapter 8.78, Section 8.78.100 of the Pasadena Municipal Code is hereby amended to read as follows:

**8.78.100 - Enforcement.**

The provisions of this chapter shall be enforced by the health officer of the city, by the Pasadena Police Department, by the City Prosecutor, or any authorized designee or agent of the city.

**SECTION 23.** Title 8, Chapter 8.78, Section 8.78.110 of the Pasadena Municipal Code is hereby amended to read as follows:

**8.78.110 - Violations and penalty.**

- A. Violations of this chapter may be charged as a misdemeanor or an infraction in the discretion of the City Prosecutor.
- B. In addition to the above remedy, a violation of this chapter may be remedied by civil action initiated by the City Attorney or through administrative action by the city Public Health Department.
- C. Any person or entity convicted of a misdemeanor under this chapter shall be punished by a fine of \$500 for the first violation of any section of this chapter, \$1,000 for a second violation of any section of this chapter, or \$2,000 for three or

more violations of any section of this chapter; or by imprisonment not to exceed 6 months; or by both such fine and imprisonment.

- D. Any person or entity convicted of an infraction under this chapter shall be punished by a fine of \$500 for the first violation of any section of this chapter, \$1,000 for a second violation of any section of this chapter, or \$2,000 for three or more violations of any section of this chapter.

**SECTION 24.** Title 8, Chapter 8.78, Section 8.78.120 of the Pasadena Municipal Code is hereby deleted in its entirety as follows:

**SECTION 25.** Title 8, Chapter 8.78, Section 8.78.130 of the Pasadena Municipal Code is hereby amended to read as follows:


**8.78.130 - Exemptions.**

This chapter is not intended to regulate smoking on property owned or leased by county, state or federal governmental entities or tobacco stores.

**SECTION 26.** The City Clerk shall certify the adoption of this ordinance and shall cause this ordinance to be published by title and summary in a newspaper of general circulation in the City.

**SECTION 27.** This ordinance shall take effect upon the expiration of 30 days from publication by title and summary.

Signed and approved this 1<sup>st</sup> day of <sup>November</sup>, 2021.



Victor M. Gordo  
Mayor of the City of Pasadena

I HEREBY CERTIFY that the foregoing ordinance was adopted by the City Council of the City of Pasadena at its meeting held this 1st day of \_\_\_\_\_, 2021, by the following vote:

AYES: Councilmembers Hampton, Kennedy, Madison, Masuda, Rivas, Williams, Vice Mayor Wilson, Mayor Gordo

NOES: None

ABSENT: None

ABSTAIN: None

Date Published: November 4, 2021

  
\_\_\_\_\_  
Mark Jomsky, CMC  
CITY CLERK

Approved as to form:

  
\_\_\_\_\_  
Lisa Hosey  
Assistant City Attorney